

FILED

U.S. DISTRICT COURT
EASTERN DIST. TENN.

DEPT. OF ENV.

Plaintiff,

Case No. 3:17-CV-163

**TIFFANY SMITH,
RUSSELL JOHNSON, and
BECKY RUPPE,**

Defendants.

I. INTRODUCTION

II. FACTS

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3. The Subpoena is part of Plaintiff's efforts to obtain documents related to the Defendants conspiracy to retaliate for political loses.
4. After service, the TBI wrote and requested that the plaintiff sign a Nondisclosure Agreement and pay \$63.60 for copies, attached as Exhibit B.
5. Plaintiff responded that federal law requires responding parties to bear their own expenses, unless they are significant, as shown in Exhibit C, to which the TBI refused to comply with the subpoena as shown in Exhibit D.
6. Accordingly, Plaintiff files this Motion and respectfully requests this Court to compel the TBI to produce the subpoenaed documents.

III. LAW AND ARGUMENT

As explained in *United States v. Cardinal Growth*, in federal court, the presumption is that the responding party must bear the expense of complying with discovery requests unless the expense is "significant." No. 11 C 4071 (N.D. Ill. Feb. 23, 2015). In *Cardinal Growth*, the Small Business Administration sued Cardinal after it failed to repay loans. The court appointed the SBA as receiver and permitted it to marshal Cardinal's assets and business records. As a result, the SBA requested documents from attorneys who represented Cardinal in prior business transactions.

The law firm produced the documents, but sought reimbursement for over \$44,000 spent complying with the subpoena. Much of the cost related to charges by an e-discovery vendor to collect and search electronically stored information (ESI), including e-mail relating to Cardinal.

The court denied the reimbursement request. Although the law firm petitioned for costs under Fed. R. Civ. P. 45, the rule governing third party subpoenas, the rule did not apply. The

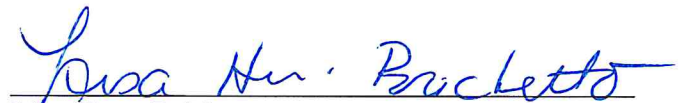
SBA's document request was not based on Rule 45, but on the court's order permitting the SBA to collect Cardinal's business records. The court further concluded that if Rule 45 applied, it would not authorize the payment of the law firm's costs.

When a non-party produces documents pursuant to a Rule 45 subpoena, presumptively, the responding party bears the expense of compliance. However, the court also pointed out that requesting parties must avoid imposing undue burden or expense on responding parties. It can hardly be considered an "undue burden" for the TBI to spend less than \$70 responding to a subpoena; therefore this motion should be granted.

IV. CONCLUSION

WHEREFORE, Plaintiff respectfully requests the entry of an order compelling non-party TBI to comply with the Subpoena, awarding Plaintiff the reasonable costs and fees in bringing this Motion, and any other relief as the Court deems just and necessary. If the Court is inclined to award fees and costs, Plaintiff respectfully requests that she be allowed 10 days to submit the necessary documents supporting the fees and costs incurred.

Respectfully submitted,

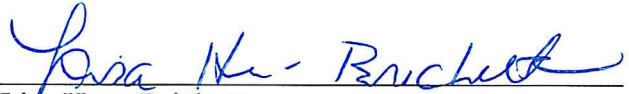


Lisa Horn-Brichetto
Plaintiff, *pro se*
5201 Kingston Pike
Suite 1
Knoxville, TN 37919
865-936-2399
lisabrichetto@yahoo.com

CERTIFICATE OF SERVICE

Plaintiff hereby certifies that a copy of the foregoing was mailed via first-class mail,
postage prepaid, to:

Mary Elizabeth McCullohs
Office of the Attorney General
P. O. Box 20207
Nashville, TN 37202-0207



Lisa Horn-Brichetto
Plaintiff, *pro se*

UNITED STATES DISTRICT COURT

for the
Eastern District of Tennessee

LISA-HORN-BRICHETTO

Plaintiff

v.

TIFFANY SMITH et al

Defendant

Civil Action No. 3:17-CV-163

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: JOSH DEVINE/TENNESSEE BUREAU OF INVESTIGATION

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

INVESTIGATIVE REPORT, MORGAN COUNTY CASE 2011-CR-41A

Place: Lisa Horn-Brichetto at the address below

Date and Time:

04/30/2018 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4/10/18

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Lisa Horn-Brichetto pro se 4815 Kingston Pike, Knoxville, TN 37919, who issues or requests this subpoena, are:

lisabrichetto@yahoo.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



BILL HASLAM
GOVERNOR

TENNESSEE BUREAU OF INVESTIGATION

901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639
(615) 744-4000
Facsimile (615) 744-4500
TDD (615) 744-4001



MARK GWYN
DIRECTOR

May 14, 2018

Lisa Horn-Brichetto
4815 Kingston Pike
Knoxville, TN. 37919

Re: Lisa Horn-Brichetto v. Tiffany Smith, et al.

Dear Ms. Brichetto:

Enclosed please find a Limited Nondisclosure Agreement regarding TBI's production of its file regarding Lisa Catherine Brichetto TBI Case File NA-16A-000084. We have redacted the criminal history information, and for that reason the pages that are Bate stamped with the following numbers have been withheld: CID 29-33. If the Agreement meets with your approval, please sign it and return it to me. If the Agreement does not meet with your approval, please contact me at your convenience.

TBI policy states that the charge for copying documents is twenty cents per page; therefore, the cost will be for pages 318 @ 20 cents per copy, or \$63.60

Once TBI receives a copy of the signed Agreement, along with payment of \$63.60, we will forward the file to you. Please contact me if you have any questions.

Sincerely,

Jeanne Broadwell

Jeanne Broadwell
General Counsel

JB/as
Enclosure

Exhibit B



Lisa Horn-Brichetto
5201 Kingston Pike
Suite 1
Knoxville, TN 37919
lisabrichetto@yahoo.com

May 29, 2018

Ms. Jeanne Broadwell
General Counsel
Tennessee Bureau Of Investigation
901 R.S. Gass Blvd.
Nashville, TN 37216

RE: Subpoena for Records 3:17-CV-163

Dear Ms. Broadwell:

As explained in *United States v. Cardinal Growth*, in federal court, the presumption is that the responding party must bear the expense of complying with discovery requests unless the expense is "significant." If the subpoena is issued in a state court matter, a state statute or court rule may shift the costs of subpoena compliance to the requesting party.

I do not consider the request for 318 pages of documents from the TBI to be "significant", nor an undue burden or expense to the State Agency.

Therefore I must request you forward the documents as listed on the subpoena.

Regards,

Lisa Horn-Brichetto *pro se*

Exhibit C



BILL HASLAM
GOVERNOR

TENNESSEE BUREAU OF INVESTIGATION

901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639
(615) 744-4000
Facsimile (615) 744-4500
TDD (615) 744-4001



MARK GWYN
DIRECTOR

June 6, 2018

Lisa Horn-Brichetto
5201 Kingston Pike, Suite 1
Knoxville, TN 37919

Dear Ms. Brichetto,

We have reviewed your request for TBI to produce our records pursuant to your subpoena at no cost to you. In accordance with TBI policy we deny your request and will not produce the records until we receive payment.

Sincerely,

Jeanne Broadwell
General Counsel

Exhibit D

